

RTO West Market Monitoring Plan

February 6, 2002

This draft represents the proposed Market Monitoring Plan developed by the filing utilities for inclusion in their planned March 1, 2002 filing to FERC. It is a work in progress and is subject to change. The filing utilities are releasing this draft to provide an opportunity for stakeholder review and comment. Interested stakeholders may provide comments and input on this draft at the RRG meetings scheduled for February 11 and 12 or in writing. Comments in writing should be sent via email by February 15 at the latest to Bud Krogh at ekrogh@serv.net and Chris Elliott at chrisrtowest@earthlink.net.

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[This draft is constructed for a stand-alone RTO West MMU and is intended to be part of the March 1 filing. The status of the SSG-WI Market Monitoring Work Group discussions regarding a single west-wide market monitoring entity will be discussed in detail in the filing letter (hopefully those discussions will be fairly well advanced by the time of the filing).

Also, it will be important to supplement this plan when more is known about “RTO West Markets”, especially with respect to the collection and dissemination of data.]

1. PURPOSE AND OBJECTIVES OF THE PLAN¹

This RTO West Market Monitoring Plan (the “Plan”) is intended to provide for the independent, impartial, and effective monitoring of, and reporting on: (1) the competitive performance and efficiency of RTO West Markets and Services, including identification of opportunities for efficiency improvements; (2) the conduct of Market Participants, Executing Transmission Owners, and RTO West including, but not limited to, any exercise or attempt to exercise market power in any RTO Market or inefficiently reduce the quantity or quality of transmission service in the region; (3) the operation, use, and congestion of the transmission system as such system affects competitive conditions in the region; and (4) the adequacy and effectiveness of any market rule, procedure, or action that affects the competitiveness or economic efficiency of RTO West’s Markets and Services. The plan complies with the market monitoring requirements of the Federal Energy Regulatory Commission’s (the “Commission”) Order No. 2000.

A separate, non-profit corporation will be established to implement the Plan (Market Monitoring Unit (“MMU”). The MMU may report its studies and findings performed under the Plan to the Commission, the U.S. Department of Justice, state and provincial regulatory and enforcement entities (collectively the “Interested Government Agencies”), and RTO West, as appropriate and at its discretion, consistent with the MMU’s responsibilities under the Plan. Subject to confidentiality protections and consistent with its responsibilities under this Plan, the MMU will provide annual reports to Interested Government Agencies, the RTO West Board, Market Participants, and other interested entities, to provide them with relevant market data and the results of analyses of that data undertaken by the MMU. In addition, when the MMU detects market performance in an

¹ RTO West will have a separate Tariff Compliance Office that will be responsible for monitoring and enforcing compliance with the RTO West tariff.

RTO Market that is inconsistent with a competitive market, the MMU shall further analyze the situation to determine the cause of such performance. The MMU will coordinate with the Interested Government Agencies to determine appropriate MMU reporting to them.

The MMU will also respond to requests from the Interested Government Agencies for additional analysis or data the MMU has in its possession, subject to its obligation to protect the confidentiality of the data, consistent with the scope of its responsibilities, as determined by this Plan, and consistent with the legitimate needs and statutory purpose and authority of the Interested Government Agencies. Consistent with section 5.1.5 of this Plan, the MMU will also respond to complaints by RTO West customers that allege a failure by RTO West to properly enforce the provisions of the tariff in a manner that affects market efficiency or concerns raised about the conduct of the RTO as a Market Participant.

The Plan is intended to protect and foster competition, while minimizing interference with open and competitive markets. The MMU will recognize that conduct that might under some circumstances suggest an attempt to exercise market power is, under other circumstances, pro-competitive and efficient. In making this distinction, the MMU will generally focus on an analysis of the identified conduct and associated market impacts, rather than seeking to determine the intent of the participant (e.g., the MMU would not conduct profitability analyses that require comprehensive information on all the physical and financial positions of a participant). The MMU will work to ensure that all monitoring and reporting activities are implemented fairly and consistently in accordance with the Plan.

2. INDEPENDENCE OF MARKET MONITORING UNIT

The MMU shall have independence to perform those activities necessary to provide impartial and effective Market Monitoring within the scope of the Plan. No person, party or agent, including the RTO West Board or employees or Interested Government Agency, may screen, alter, delete, or delay MMU analyses or the preparation of findings, conclusions, and recommendations developed by the MMU that fall within the scope of Market Monitoring responsibilities contained in the Plan.

3. DEFINITIONS

For purposes of this Plan, capitalized terms have the following meanings:

3.1 Interested Government Agencies

“Interested Government Agencies” means the Federal Energy Regulatory Commission, the State Regulatory Commissions, Canadian Provincial Regulators, the U.S. Department

of Justice, State Attorneys General, and other governmental bodies given jurisdictional or regulatory authority over energy market matters in the RTO West region or the activities of RTO West or its Market Participants.

3.2 Market Monitoring Unit

“Market Monitoring Unit” means non-profit corporation established to carry out this Plan.

3.3 Market Participant

“Market Participant” means any entity that, either directly or through an affiliate, sells, brokers, or purchases electric energy, transmission services, or ancillary services in RTO West Markets.

3.4 Market Monitoring

“Market Monitoring” means the actions of the MMU taken in the course of fulfilling the responsibilities set forth below in Section 5.1.

3.5 Plan

“Plan” means RTO West’s Market Monitoring Plan set forth in this document.

3.6 RTO West Markets

“RTO West Markets” means only those markets that are created, administered, coordinated or facilitated by RTO West. Such markets may include an imbalance energy market, a congestion management market or system, an ancillary services market, a market for the purchase or sale of transmission rights, and any other market created, administered, coordinated or facilitated by the RTO West.

3.7 RTO West Services

“RTO West Services” means Open Access Transmission Tariff (tariff) services provided by RTO West.

3.8 State and Provincial Regulatory Commissions

“State and Provincial Regulatory Commissions” means those State and Provincial Regulatory commissions in those states and Canadian Provinces that contain a portion of the RTO West Transmission System or regulate Market Participants.

4. SCOPE OF MONITORING

4.1 Markets to be Monitored

The MMU's Market Monitoring responsibilities extend only toward monitoring RTO West Markets.

The MMU may gather any publicly available data and information and perform any analysis pertaining to such other markets that it determines appropriate to fulfill its Market Monitoring responsibilities; provided if such market is already monitored by an independent entity, the MMU shall not duplicate such entity's efforts but shall rely on its reports. These markets may include without limitation gas and fuel markets, spot markets, fuels transportation markets, and futures markets.

The MMU may periodically assess the effect of bilateral energy or capacity markets, or private transmission rights not administered, coordinated or facilitated by the RTO, on RTO West's Markets and Services, or the effects of RTO West's Markets and Services on such markets. The scope of such assessments shall be limited to the extent required to fulfill the Commission's Order No. 2000 requirements that such assessments be performed and subsequent orders on this topic.

4.2 Persons and Entities Subject to the Plan

RTO West, the MMU, and any person or entity participating in any of RTO West's Markets or that takes service under or is a party to any RTO West tariff or agreement, shall be subject to the terms, conditions and obligations of this Plan.

5. STRUCTURE

5.1 Responsibilities of Market Monitoring Unit

The MMU shall:

- (1) Advise RTO West, and shall prepare and submit to the Commission the reports specified herein, on the nature and extent of, and any impediments to, competition in and the economic efficiency of RTO West's Markets and Services;
- (2) Assist in the development of this Plan, including the screens and indices described in Section 7 of the Plan;
- (3) Assist the transmission owners and Market Participants in the collaborative development of a process that is designed to:
 - (a) Achieve Market Monitoring purpose and objectives;

- (b) Afford procedural protections to all transmission owners and Market Participants;
 - (c) Provide procedural protections when data alerts the MMU of market performance inconsistent with a competitive market and, as part of the follow-up analysis, individual conduct is evaluated (the process should, at a minimum, specify when and how a party should be notified and address confidentiality issues);
 - (d) Accommodate differing jurisdictional requirements for Market Participants and transmission owners (in particular with respect to Canadian participants);
 - (e) Provide more specifics regarding the information that will be collected and disseminated by the MMU, including appropriate treatment of confidential information (see section 6.2);
 - (f) Provide more specifics regarding the annual report regarding non-RTO markets;
 - (g) Provide specifics regarding maintenance and dissemination of information compiled by the MMU (provided sensitive bid data will only be released in conformance with current FERC standards/policy);
 - (h) Provide guidance on how the MMU professional staff will objectively evaluate market performance to identify performance that is inconsistent with a competitive market and analyze the causes of such performance (industry standards should be described or identified that could be considered by the MMU staff to aid their professional judgment);
 - (i) Establish communication protocols among MMU and the RTO staff;
 - (j) Provide for an annual evaluation of the RTO's design's impact on the market; and
 - (k) Be timely and cost effective;
- (3) Implement this Plan, including the following responsibilities:
- (a) Collect information on RTO West Markets and Services as part of the regular course of RTO business;
 - (b) Assemble such information;

- (c) Disseminate non-confidential information on RTO West Markets and Services, provided that sensitive bid data shall be disseminated in compliance with the Protection of Confidential Data, section 6.2 below;
 - (d) Evaluate the information;
 - (e) Where the MMU has detected RTO West market performance that is inconsistent with a competitive market, analyze further to determine the cause of the inconsistent performance;
 - (f) Report data collected pursuant to this Plan to the appropriate entities as described in this Plan; and
 - (g) Consider RTO West and Market Participant operational behavior in response to a submitted complaint;
- (4) Recommend to RTO West modifications to improve its market rules, tariffs, protocols, or other corrective actions to remedy design flaws or otherwise improve the competitiveness or efficiency of RTO West's Markets and Services;
 - (5) Recommend to RTO West modifications to improve market rules, tariffs, or protocols to improve the compatibility of RTO West's Markets and Services with markets and services provided by other western RTOs;
 - (6) Monitor RTO West Markets and Services and, when it detects market performance that is inconsistent with a competitive market, analyze further to determine the causes of such performance; and
 - (7) Such other duties and responsibilities as specified in this Plan, as it may be amended from time to time.

The MMU shall not have any authority:

- (1) To enforce antitrust or other laws, but instead shall notify law enforcement authorities of suspected violations of law;
- (2) To impose penalties of any sort except that the MMU can monitor compliance with penalties imposed by RTO tariff or FERC order; and
- (3) To implement price mitigation measure of changes in tariff provisions or market design; provided in its review of the design of RTO West Markets and Services, the MMU may recommend to the RTO West Board and the Commission that specific mitigation measures or changes to tariff provisions or market design be adopted and that the MMU shall monitor compliance with any FERC-approved mitigation measures; and

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5.1.1 Creation of the MMU

In order to ensure independence, the RTO West Board of Directors shall assist in the creation of a not-for-profit corporation with an independent board that will be responsible for implementing the MMU responsibilities under this Plan. The governing documents establishing the corporation shall include mechanisms that ensure the corporation is held accountable for the satisfactory performance of its duties under this Plan in a fiscally responsible manner. The corporation shall also be authorized to enter into whatever contracts are needed with RTO West in order to fulfill the MMU's responsibilities under the Plan; provided such contracts shall preserve independence on the part of the MMU as required in the Plan.

The non-profit company may perform the work itself or hire an independent contractor to provide part or all of such services; provided that whoever performs the work shall have experience and expertise appropriate to the analysis of competitive conditions in Northwest markets for energy, ancillary services, and transmission rights, and to such other responsibilities as are assigned to the MMU under this Plan. At a minimum, the following areas of expertise will be represented: economics, business/commercial (e.g., risk management, commodities, electric power system operation and markets), finance, engineering (including knowledge and experience of Northwest hydroelectric system operations and statutory and regulatory overlay), statistics, data management, and legal. These will not all be full-time positions.

5.1.45 Conflicts of Interest

The RTO West Board of Directors shall adopt a policy on conflicts of interest for the MMU, and establish appropriate standards for the professional and financial independence of the MMU, including its Board members, employees, subcontractors and consultants), including ethics policies and standards for Board members, employees, and subcontractors. The MMU, including each Board Member, employee, or subcontractor, shall comply at all times with the conflicts of interest and ethics policies, and shall certify such compliance to the RTO West Board of Directors upon request.

5.1.3 Legal Advice

The MMU may consult legal counsel for advice on antitrust, regulatory, or other legal issues pertinent to this Plan.

5.1.4 Complaints Regarding Tariff Compliance

The RTO West Tariff Compliance Office will resolve all complaints alleging non-compliance with the RTO West Tariff and such resolutions shall be subject to the RTO West Tariff ADR process; provided any entity may present to the MMU allegations that

RTO West has failed to comply with the RTO West Tariff. Where the MMU determines, in its sole discretion, that such allegations, if proven, could reasonably be believed to impact the performance of RTO West Markets, then the MMU may investigate such complaints. If the results of such an analysis clearly indicate that RTO West has failed to comply with the RTO West tariff, then the MMU may issue an advisory opinion stating its conclusions and the reasons therefore. At the complainant's request, the MMU shall transmit any such advisory opinion to the Commission or an arbitrator appointed pursuant to the RTO West Tariff ADR provisions, who may give whatever weight to such opinion that they deem appropriate. If the results of such an analysis do not clearly indicate that RTO West has failed to comply with the RTO West tariff, the MMU may issue a statement so indicating, but shall refrain from otherwise reporting on the matter.

5.2 Market Monitor Liaison

The MMU's Board of Directors shall select a Market Monitoring Liaison from its staff who shall serve as a liaison between RTO West and the MMU.

6. DATA COLLECTION AND DISSEMINATION

The MMU's access to information generated by RTO West and RTO West Market participants shall be limited to information collected by RTO West in its regular course of business. The MMU shall not have the ability to compel further production of information.

6.1 Access to RTO West's Data and Information

[The following is just a placeholder pending development of further detail regarding RTO West Markets]

For purposes of carrying out its responsibilities under this Plan and subject to confidentiality protections, the MMU shall have access to data or other information gathered or generated by RTO West in the course of its operations. This data and information shall include, but not be limited to:

- 1) Hourly injection and withdrawal schedules, bids, and actual output for the generating units within the RTO West System (including designated network resources outside the RTO);
- 2) Catalogued transmission rights within, into, out of, or through the RTO West System;
- 3) Data relating to RTO West Financial Transmission Option auctions;
- 4) Transmission limits (including temporary deratings);

- 5) Hourly flow over RTO West Controlled Transmission Facilities;
- 6) Dispatch of generation for energy, regulation, and frequency or other operational orders, including RTO or control area operating logs or other information pertaining to such dispatch;
- 7) Redispatch of generation or other actions taken to manage transmission congestion;
- 8) Generation meter data or other actual production data;
- 9) Logs of transmission requests, including the disposition of the request and the explanation for any refused, retracted or annulled requests;
- 10) Logs of generator interconnection requests, including the disposition of the request and the explanation of any refused requests;
- 11) Generation and transmission facility outage data;
- 12) Records of complaints by RTO West Market Participants; and
- 13) Other information required to be provided to RTO West under its tariffs, operating agreements, contracts, reliability organization requirements, or government agency orders.

6.2 Access to Data not in RTO West's Possession

The MMU may ask a transmission owner or market participation for additional information, but it will not have independent authority to compel the production of such information.

6.3 Protection of Confidential Data

[This section will need to be developed further after RTO West Markets have been fully designed. In the meantime, the following can be said about confidentiality issues.]

The MMU will have access to all of the information possessed by RTO West. Generally, information will fall into three categories: (1) routine, non-sensitive information (which will be regularly released to the public); (2) data and information generated by the MMU; (3) confidential bid information; and (4) data that was obtained by RTO West pursuant to a confidentiality agreement.

The MMU may not share confidential information with any entity, other than an Interested Government Agency, except that confidential bid data shall be released

publicly pursuant to Commission standards only. The MMU may share the second class of information with an Interested Government Agency only to the extent the Interested Government Agency has entered into a confidentiality agreement with the MMU that provides a level of protection satisfactory to the MMU. The MMU may share the third and fourth classes of information with an Interested Government Agency only to the extent the Interested Government Agency has the independent legal authority to compel production of such data from the MMU, the RTO, or the data source, and then only to the extent the Interested Government Agency enters into a confidentiality agreement with the MMU that provides at least the level of protection afforded by any confidentiality agreement in the chain of contractual privity between the data source and the MMU.

The MMU and regulatory and enforcement entities will need to discuss if, when, and how to publicly release the results of the MMU's further analysis, and adequate procedural protections will be afforded to any entity being studied.]

7. PERFORMANCE INDICES AND SCREENS

7.1 Development of Indices and Screens

The MMU, with due consideration of the proposals and comments of Market Participants and other interested parties submitted as specified below, and subject to review and comment by the Market Monitor Liaison, shall develop and adopt such indices or other screens for reviewing the data or other information as the MMU deems appropriate.

7.2 Consultation with Market Participants

In connection with the development of indices and screens as specified above, Market Participants, Interested Government Agencies, or other interested parties may submit proposed indices or screens for review of the data or other information collected in connection with the implementation of this Plan, along with any justification for the adoption thereof, to the MMU for consideration and adoption if and to the extent appropriate. The MMU shall provide Market Participants and other interested parties the opportunity to comment on any new indices and screens prior to their adoption.

7.3 Use of Indices and Screens

As much as practicable, the MMU shall review data or other information collected in connection with implementation of this Plan in accordance with the indices or screens adopted as specified above; provided that nothing herein shall be deemed to prevent the MMU from conducting such further or different review or evaluation of such data or information as appropriate for the effective implementation of this Plan.

8. COMPLAINTS AND REQUESTS FOR FURTHER ANALYSIS

8.1 Requests for Further Analysis from Interested Government Agencies

Any entity, including an Interested Government Agency, the RTO West Board, any transmission owner or any Market Participant may at any time submit information to the MMU concerning any matter relevant to the responsibilities of the MMU under the Plan, or may submit a request to the MMU for it to conduct a study. Such submissions or requests may be made on a confidential basis. The MMU may request further relevant information available from the requesting entity or other person or entity as a condition of undertaking any further analysis.

The MMU, in its sole discretion and subject to resource availability, will determine whether such a study would be consistent with and reasonably necessary to fulfill the MMU's responsibilities under this Plan. If it so determines, the MMU shall carry out the requested study. In exercising its discretion, the MMU's first priority is to make sure that RTO West Markets are designed and operating appropriately, its second priority is to assist RTO West, Interested Government Agencies, and other agencies with jurisdiction over market performance and the RTO with further analysis, and its third priority is to provide assistance regarding other parties' requests for further analysis.

The MMU shall report the results of these studies, subject to redaction or other measures necessary for the protection of confidential information, including without limitation the measures prescribed in section 6.3 of this Plan, to the agency requesting the analysis and, as appropriate, to the Commission, other Interested Government Agencies, and to the RTO West Board of Directors. If the study was requested by a transmission owner or a Market Participant, the MMU shall determine the measures necessary for the protection of confidential information, what information to release to the requesting entity.

8.2 Procedural Safeguards

The MMU, in an open stakeholder process, will develop procedures to govern its further analysis, including responding to request or complaints and determining the cause of performance in an RTO West Market that is inconsistent with a competitive market. These procedures will ensure that an accurate and complete record will be developed, including an opportunity for Market Participants that are the subject of an MMU analysis to review data, furnish data, information, interpretations, analysis, and conclusions that will become part of the factual record pertaining to the analysis.

8.3 Reporting of Complaints and Requests

The MMU shall include a summary of its actions or decisions not to act in response to requests for analysis in its annual report as well as in any other periodic or other reports on any matters within its purview as may be requested by the RTO West Board of Directors and any of the Interested Government Agencies.

9. REPORTS

9.1 Periodic Reports

The MMU shall prepare and report to the RTO West Board of Directors at least annually on the competitive performance and efficiency of RTO West's Markets and Services. Such report shall include any recommendations of the MMU for the improvement of RTO West Markets or RTO West Services, or of the monitoring, reporting, and other functions undertaken pursuant to this Plan. The report shall also include a description of all requests for analysis and complaints and the resolution or disposition thereof. A copy of the report shall be forwarded by the MMU to each of the Interested Government Agencies. Copies of the report shall be made publicly available by RTO West, subject to redaction or other measures necessary for the protection of confidential information.

9.2 Other Reports or Filings

The MMU shall prepare such other periodic or other reports on any matters within its purview as may be requested by the RTO West Board of Directors. Interested Government Agencies may request that the MMU prepare other reports on any matters needed to support their jurisdictional responsibilities that are within the MMU's purview. As instructed by the RTO West Board of Directors or, to the extent the MMU, in the MMU's sole discretion, deems such reports consistent with and reasonably necessary to fulfill its responsibilities under this Plan, the MMU shall prepare such reports, provided that the MMU shall respond to subpoenas in compliance with applicable law. The MMU shall also prepare other reports that it deems necessary.

Copies of such reports shall be made publicly available by the MMU, subject to redaction or other measures necessary for the protection of confidential information. *[Once again, pending final recommendation re treatment of confidential information, especially with regard to Interested Government Agencies.]*

10. EMERGENCY RULE CHANGES

The MMU may identify and develop proposed changes in tariff provisions or market design, and may discuss and propose these changes to the RTO West Board of Directors, RTO West staff, and Market Participants. The MMU may indicate its preference that such proposals be given expedited treatment by the RTO West Board.

11. LIABILITY *[Need input from the lawyers on this section – Do we even need to have it?]*

The MMU shall carry errors and omissions, and such other insurance it deems necessary, in levels sufficient to protect its Board members, directors, officers, employees and agents from liability related to the MMU's performance of its duties under this Plan.

The liability of RTO West, and its directors, officers, employees and agents, and of the MMU, its directors, officers, employees and agents, for any matter arising under or relating to this Plan shall be governed by this section. RTO West, and its directors, officers, employees and agents, and the MMU, shall not be liable to any person or entity for any matter, act or omission described in or contemplated by this Plan, as the same may be amended or supplemented from time to time, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect or consequential damages of any kind resulting from or attributable to any act or omission of RTO West or the MMU under this Plan unless the foregoing persons or organizations are found to have engaged in gross negligence or willful misconduct by a court of competent jurisdiction. RTO West shall indemnify and hold harmless its directors, officers, employees and agents and the MMU, its directors, officers, employees and agents, of and from any and all actions, claims, demands, costs (including any form of damages or other economic loss and all court costs and reasonable attorneys' fees) and liabilities to third parties, arising from or in any way connected with, the implementation or a failure to implement this Plan, except to the extent that such action, claim, demand, cost or liability results from the gross negligence or willful misconduct of any of the foregoing persons.

12. RIGHTS AND REMEDIES

- 1) With the exception of the limitation of liability specified in this Plan, nothing herein shall prevent RTO West or any other person or entity from asserting any rights it may have under the Federal Power Act or any other applicable law, statute, or regulation, including the filing of a petition with or otherwise initiating a proceeding before the Commission regarding any matter which is the subject of this Plan.
- 2) Except as and to the extent otherwise specified in this Plan, disputes as to the implementation of or compliance with this Plan shall be subject to the RTO West dispute resolution procedures.

13. EFFECTIVE DATE

[To be determined in context of entire filing.]